

MEDICAL JURISPRUDENCE

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A recent decision by the California District Court of Appeal (85 A.C.A. 251, May 7, 1948) involving a discussion of the doctrine of *res ipsa loquitur* may be of interest to physicians and surgeons.

The District Court of Appeals had before it a case arising from the following facts: At the trial the plaintiff patient testified that she had been suffering from a varicose vein condition in both legs from her thighs to her ankles. The defendant doctor made a visual examination of the patient and directed that she enter a hospital. While in the hospital the physician examined patient's legs again and then directed a hospital nurse to bring him a small basin of water and a silver nitrate pencil. The physician then dipped the pencil into the water and outlined the patient's leg veins that were to be removed. There were four of such markings made on each leg, two above the knees and two below. The plaintiff patient testified that shortly thereafter her legs began to burn and became very inflamed around the areas marked by the defendant, and that in a short time blisters formed at such areas. The defendant physician was unable to operate the next morning as had been planned, and upon examination of the patient's legs told her that the operation could not be performed because the burns were too severe. As a result of these burns, the plaintiff testified, she was forced to remain away from work and had to wear bandages for over a month, and she testified that she was still scarred from the burns.

The only other witness was the defendant physician himself, who testified that in his city it was the common practice of physicians in this type of operation to mark off with a silver nitrate solution the area to be operated upon, and that it was also standard practice in his area to mark off the operating area without first making any tests. He stated that prior to his treatment of plaintiff he had performed three or four hundred of such operations and that everything he did in this case was performed according to the ordinary standards of practice of surgeons in his city.

On this evidence the trial court granted the defendant physician's motion for a non suit on the ground that the plaintiff had failed to show that the defendant physician did not possess and use the degree of skill possessed by other practitioners in the same locality.

On appeal the District Court of Appeal stated that the trial court was correct in granting the non suit unless the doctrine of *res ipsa loquitur* was applicable.

In its opinion the court stated that the doctrine normally applies where the accident that occurred was such that in the ordinary course of events the defendant using ordinary care, it would not have happened, and where the instrumentality causing the accident was under the control of the defendant. In an analysis the District Court of Appeal held that all of the requirements of this doctrine had been met and therefore this operated to raise an inference of negligence and the trial court, it stated, should not have granted the non suit.

It may be noted in this opinion that a dissent was entered by one of the Justices of the District Court of Appeal in which he stated that negligence upon the part of a physician or surgeon is not presumed from the mere happening of an injury to a patient under his care. Further, that the doctrine of *res ipsa loquitur* should not be extended to the point where negligence from the mere happening of an injury to a patient might be presumed. In his analysis the dissenting Justice states clearly that the law has never held a physician or surgeon liable for any untoward result which may occur in medical practice. It requires only that he shall have the degree of learning and skill ordinarily possessed by physicians of good standing practicing in the same locality, and that he shall use the ordinary care and diligence in applying that learning and skill to the treatment of his patients. From this the dissenting Judge concluded that the facts did not warrant the application of the doctrine of *res ipsa loquitur* and, therefore, the judgment by the lower court should have been upheld.

